



State of Wisconsin
1999 - 2000 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 356**

March 21, 2000 - Offered by COMMITTEE ON ENVIRONMENT.

1 **AN ACT to create** 299.85 of the statutes; **relating to:** an environmental
2 improvement program, environmental performance evaluations,
3 environmental management programs, providing immunity for certain
4 violations of environmental requirements, access to certain information and
5 providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 299.85 of the statutes is created to read:

7 **299.85 Environmental improvement program. (1) DEFINITIONS.** In this
8 section:

9 (a) "Environmental management system" means an organized set of
10 procedures implemented by the owner or operator of a facility to evaluate the
11 environmental performance of the facility and to achieve measurable or noticeable

1 improvements in that environmental performance through planning and changes in
2 the facility's operations.

3 (am) "Environmental performance" means the effects of a facility on air, water,
4 land, natural resources and human health.

5 (b) "Environmental performance evaluation" means a systematic, documented
6 and objective review, conducted by or on behalf of the owner or operator of a facility,
7 of the environmental performance of the facility, including an evaluation of
8 compliance with one or more environmental requirements.

9 (c) "Environmental requirement" means a requirement in any of the following:

10 1. Chapters 160 or 280 to 299, a rule promulgated under one of those chapters
11 or a permit, license, other approval or order issued by the department under one of
12 those chapters.

13 2. An ordinance or other legally binding requirement of a local governmental
14 unit enacted under authority granted by a state law relating to environmental
15 protection.

16 (d) "Facility" means all buildings, equipment and structures located on a single
17 parcel or on adjacent parcels that are owned or operated by the same person.

18 (e) "Local governmental unit" means a city, village, town, county, town sanitary
19 district or metropolitan sewerage district.

20 (f) "Regulated entity" means a public or private entity that is subject to
21 environmental requirements.

22 **(2) REQUIREMENTS FOR PARTICIPATION.** A regulated entity qualifies for
23 participation in the environmental improvement program with respect to a facility
24 owned or operated by the regulated entity if all of the following apply:

1 (a) If the regulated entity conducts an environmental performance evaluation,
2 the regulated entity notified the department in writing, no less than 30 days before
3 beginning an environmental performance evaluation, of the date on which the
4 environmental performance evaluation would begin, the site or facility or the
5 operations or practices at a site or facility to be reviewed and the general scope of the
6 environmental performance evaluation.

7 (b) At the time of submitting a report under sub. (3), more than 2 years have
8 elapsed since the department of justice has filed a suit to enforce an environmental
9 requirement, or the department or a local governmental unit has issued a citation
10 to enforce an environmental requirement, because of a violation of an environmental
11 requirement involving the facility.

12 (c) The regulated entity conducts an environmental performance evaluation of
13 the facility or submits findings from the facility's environmental management
14 system.

15 (d) The regulated entity submits a report as required under sub. (3).

16 (e) If the regulated entity conducts an environmental performance evaluation,
17 the environmental performance evaluation complies with sub. (4).

18 (f) If the regulated entity submits findings from the facility's environmental
19 management system, the environmental management system complies with sub. (5).

20 **(3) REPORT.** In order to participate in the environmental improvement program
21 with respect to a facility, a regulated entity that owns or operates the facility shall
22 submit a report to the department within 45 days after the date of the final written
23 report of findings of an environmental performance evaluation of the facility or
24 within 45 days after the date of findings from the facility's environmental

1 management system if the findings identify a violation of an environmental
2 requirement. The report shall include all of the following:

3 (a) 1. If the regulated entity conducted an environmental performance
4 evaluation, a description of the environmental performance evaluation, including
5 who conducted the environmental performance evaluation, when it was completed,
6 what activities and operations were examined and what was revealed by the
7 environmental performance evaluation.

8 2. If the regulated entity submits findings from an environmental management
9 system, a description of the environmental management system, of the activities and
10 operations covered by the environmental management system and of who made the
11 findings and when the findings were made.

12 (b) A description of all violations of environmental requirements revealed by
13 the environmental performance evaluation or the environmental management
14 system and of the length of time that the violations may have continued.

15 (c) A description of actions taken or proposed to be taken to correct the
16 violations of environmental requirements.

17 (d) A commitment to correct the violations of environmental requirements
18 within 90 days of submitting the report or within a compliance schedule approved
19 by the department.

20 (e) If the regulated entity proposes to take more than 90 days to correct the
21 violations of environmental requirements, a proposed compliance schedule that
22 contains the shortest reasonable periods for correcting the violations of
23 environmental requirements, a statement that justifies the proposed compliance
24 schedule and a description of measures that the regulated entity will take to

1 minimize the effects of the violations of environmental requirements during the
2 period of the compliance schedule.

3 (em) If the regulated entity proposes to take more than 90 days to correct the
4 violations of environmental requirements, proposed stipulated penalties to be
5 imposed if the regulated entity violates the compliance schedule under par. (e).

6 (f) A description of the measures that the regulated entity has taken or will take
7 to prevent future violations of environmental requirements and a timetable for
8 taking the measures that it has not yet taken.

9 (4) ENVIRONMENTAL PERFORMANCE EVALUATION. If a regulated entity conducts an
10 environmental performance evaluation under sub. (2) (c), the regulated entity does
11 not qualify for participation in the environmental improvement program unless the
12 final written report of findings of the environmental performance evaluation is
13 labeled “environmental performance evaluation report”, is dated and, if the
14 environmental performance evaluation identifies violations of environmental
15 requirements, includes a plan for corrective action. A regulated entity may use a
16 form developed by the regulated entity, by a consultant or by the department for the
17 final written report of findings of the environmental performance evaluation.

18 (5) ENVIRONMENTAL MANAGEMENT SYSTEM. If a regulated entity submits findings
19 from the facility’s environmental management system under sub. (2) (c), the
20 regulated entity does not qualify for participation in the environmental
21 improvement program unless the regulated entity’s efforts to prevent, detect and
22 correct violations of environmental requirements are appropriate to the size of the
23 regulated entity and to the nature of its business and are consistent with any criteria
24 used by the federal environmental protection agency to define due diligence in
25 federal audit policies or regulations.

1 **(6)** COMPLIANCE SCHEDULES. (a) If the department receives a report under sub.
2 (3) that contains a proposed compliance schedule under sub. (3) (e), the department
3 shall review the proposed compliance schedule. The department may approve the
4 compliance schedule as submitted or propose a different compliance schedule. If the
5 regulated entity does not agree to implement a compliance schedule proposed by the
6 department, the department shall schedule a meeting with the regulated entity to
7 attempt to reach an agreement on a compliance schedule. If the department and the
8 regulated entity do not reach an agreement on a compliance schedule, the
9 department may issue a compliance schedule. A compliance schedule under this
10 subsection is subject to review under ch. 227.

11 (b) The department may not approve or issue a compliance schedule that
12 extends longer than 12 months beyond the date of approval of the compliance
13 schedule. The department shall consider the following factors in determining
14 whether to approve a compliance schedule:

15 1. The environmental and public health consequences of the violations.

16 2. The time needed to implement a change in raw materials or method of
17 production if that change is an available alternative to other methods of correcting
18 the violations.

19 3. The time needed to purchase any equipment or supplies that are needed to
20 correct the violations.

21 **(6m)** STIPULATED PENALTIES. If the department receives proposed stipulated
22 penalties under sub. (3) (em), the department shall review the proposed stipulated
23 penalties. The department may approve the stipulated penalties as submitted or
24 propose different stipulated penalties. If the regulated entity does not agree to
25 stipulated penalties proposed by the department, the department shall schedule a

1 meeting with the regulated entity to attempt to reach an agreement on stipulated
2 penalties. If no agreement is reached, there are no stipulated penalties for violations
3 of the compliance schedule.

4 **(7) DEFERRED CIVIL ENFORCEMENT.** (a) 1. This state may not commence a civil
5 action to collect forfeitures for violations of environmental requirements at a facility
6 that are disclosed by a regulated entity that qualifies under sub. (2) for participation
7 in the environmental improvement program in a report that meets the requirements
8 of sub. (3) for at least 90 days after the department receives the report.

9 2. If the regulated entity corrects violations that are disclosed by a regulated
10 entity that qualifies under sub. (2) for participation in the environmental
11 improvement program in a report that meets the requirements of sub. (3) within 90
12 days after the department receives a report that meets the requirements of sub. (3),
13 this state may not commence a civil action to collect forfeitures for the violations.

14 3. This state may not commence a civil action to collect forfeitures for violations
15 covered by a compliance schedule that is approved under sub. (6) during the period
16 of the compliance schedule if the regulated entity is not violating the compliance
17 schedule. If the regulated entity violates the compliance schedule, the department
18 may collect the stipulated penalties or, if there are no stipulated penalties, this state
19 may commence civil action to collect forfeitures for the violations.

20 4. If the department approves a compliance schedule under sub. (6) and the
21 regulated entity corrects the violations according to the compliance schedule, this
22 state may not commence a civil action to collect forfeitures for the violations.

23 (b) Notwithstanding par. (a), this state may at any time commence a civil action
24 to collect forfeitures for violations of environmental requirements if any of the
25 following apply:

1 1. The violations present an imminent threat to public health or the
2 environment or may cause serious harm to public health or the environment.

3 2. The department discovers the violations before submission of a report under
4 sub. (3).

5 3. The violations resulted in a substantial economic benefit that gives the
6 regulated entity a clear advantage over its business competitors.

7 4. The violations are identified through monitoring or sampling required by
8 permit, statute, rule, regulation, judicial or administrative order or consent
9 agreement.

10 **(8) CONSIDERATION OF ACTIONS BY REGULATED ENTITY.** If the department receives
11 a report that complies with sub. (3) from a regulated entity that qualifies under sub.
12 (2) for participation in the environmental improvement program and the report
13 discloses a potential criminal violation of an environmental requirement, the
14 department and the department of justice shall take into account the diligent actions
15 of the regulated entity to comply with environmental requirements in deciding
16 whether to pursue a criminal enforcement action and what penalty should be sought.
17 In determining whether a regulated entity acted with due diligence and reasonable
18 care, the department and the department of justice shall consider whether the
19 regulated entity has demonstrated any of the following:

20 1. That the regulated entity took corrective action that was timely when the
21 violation was discovered.

22 2. That the regulated entity exercised reasonable care in attempting to prevent
23 the violation and to ensure compliance with environmental requirements.

24 3. That the regulated entity had a documented history of good faith efforts to
25 comply with environmental requirements before implementing its environmental

1 management system or before beginning to conduct environmental performance
2 evaluations.

3 4. That the regulated entity has promptly made appropriate efforts to achieve
4 compliance with environmental requirements since implementing its
5 environmental management system or since beginning to conduct environmental
6 performance evaluations and that action was taken with due diligence.

7 5. That the regulated entity exercised reasonable care in identifying violations
8 in a timely manner.

9 6. That the regulated entity willingly cooperated in any investigation that was
10 conducted by this state or a local governmental unit to determine the extent and
11 cause of the violation.

12 **(9) ACCESS TO RECORDS.** (a) Except as provided in pars. (b) and (c), the
13 department shall make any record, report or other information obtained in the
14 administration of this section available to the public.

15 (b) The department may not reveal to any person that the department has
16 received a notice under sub. (2) (a) or the contents of a notice received under sub. (2)
17 (a), except that the department may provide reports about notices received under
18 sub. (2) (a) as long as regulated entities providing the notices cannot be identified.

19 (c) The department shall keep confidential any part of a record, report or other
20 information obtained in the administration of this section, other than emission data
21 or discharge data, upon a showing satisfactory to the department by any person that
22 the part of a record, report or other information would, if made public, divulge a
23 method or process that is entitled to protection as a trade secret, as defined in s.
24 134.90 (1) (c), of that person.

